

OCT 31 2000

SGM 00-02

TO: Area Directors

FROM: Director

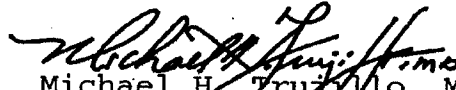
SUBJECT: Special General Memorandum Regarding Pharmacy Programs Under the Indian Self-Determination Act Contracts and Compacts

Recently, an audit (CIN: A-01-99-01502), conducted by the Office of the Inspector General (OIG), found that a tribe did not make the pre-requisite finding, required by Section 813 of the Indian Health Care Improvement Act, for extending eligibility to individuals not otherwise eligible for Indian Health Service (IHS) services. The OIG audit found that a tribe, had extended eligibility for its Indian Self-Determination Act (ISDA) contracted pharmacy program to a substantial number of the tribe's employees who were not otherwise eligible for IHS services. Specifically, the OIG concluded that the tribe lacked authority to purchase and use Federal discount drugs for such individuals. Tribal contractors and compactors may not dispense drugs purchased through Federal discount programs to non-Indian employees of the tribe, and tribes may not purchase drugs under such programs for resale to non-IHS beneficiaries.

Please review all ISDA contracts, compacts, and funding agreements (FA) within your respective Area, and identify those agreements that contain language extending pharmacy benefits inappropriately to non-IHS beneficiaries. There are circumstances, particularly in rural areas, where there is no reasonable alternative health facility and where the provision of health services to non-IHS beneficiaries will not result in a diminution of services to eligible beneficiaries. However, in most areas, there are reasonable alternative health facilities. Absent a joint determination by IHS and the tribe, meeting the two statutory criteria in Section 813, the tribe may be operating "outside" the scope of its ISDA contract or compact if the tribe provides pharmacy services to non-IHS beneficiaries. In such a case, the tribe must be cautioned that it may be exposed to legal and financial ramifications. If the joint determination has not been made, or if it cannot be made, please negotiate with the tribe to remove the unauthorized language from the contract, compact, or FA.

Page 2 - Area Directors

Please consult with your respective regional Office of General Counsel attorney for assistance in negotiating the changes to the contracts, compacts, or FAs that are not in compliance with the related Federal statutes.

A handwritten signature in dark ink, appearing to read "Michael H. Truzylo". The signature is fluid and cursive, with the last name being particularly prominent.

Michael H. Truzylo, M.D., M.P.H., M.S.
Assistant Surgeon General